SPEECH

OF

HON. J. W. STEVENSON,

OF KENTUCKY,

ON

THE STATE OF THE UNION.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JANUARY 30, 1861.

The House having under consideration the report from the select committee of thirty-three, Mr. STEVENSON said:

Mr. SPEAKER: Kentucky is one of the central States of this Confederacy, and sympathizes with no feeling, North or South, which looks to a disruption of her confederate ties. Her big and loyal heart is now palpitating with anxiety at the gloom and dangers which have been so suddenly thrown over and now enshroud this hitherto united and happy people. Though she has suffered most and suffered longest from the infraction of her guarantied rights under that compact which recognizes her as a cosovereignty in this Union, she has still fondly looked for some beaming light of returning justice in the North, to recognize those rights, and to uphold that equality. If the speech just delivered by the gentleman from New York (Mr. CONKLING) be a faithful reflection of northern sentiments, then that hope would be forever extinguished.

We stand, sir, in the midst of momentous and stunning events. For the first time in the history of our country, the fear which has sometimes agitated the patriotic heart, that the links of the Confederacy might be sundered, is to-day a stern and sad reality. Six sovereign States have, through State conventions regularly called, resumed the powers delegated to the Federal Government by their respective ratifications of the Federal Constitution, and thus sundered the ties of their Federal allegiance. Their gallant and distinguished Representatives, bound to us by so many ties of official intercourse and personal regard, and who met with us in this Hall on the 1st of last December, have, by the mandate of their respective States, ceased to be our peers. I pause not now to inquire, whether the act of withdrawal by a State from our Federal sphere, be constitutional secession or merely revolution. The solution of the question cannot lessen our responsibility in meeting it as a pregnant fact of actual dismemberment, or diminish its influence on the peace, happiness, and prosperity of the remaining States of the Confederacy.

To apply the remedy, we should ascertain clearly the extent and character of the disease. Various *projets*, looking to unity and peace, are before the Senate and this House. The senior Senator from Kentucky, now, I believe, the father of the Senate, full of years, and full of honor, proposed, at an early day in the session, certain amendments to the Constitution, which, if they had been adopted, would, it is confidently believed, have afforded the basis of a satisfac-

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tory adjustment. Had Republicans received them at once, in the spirit in which they were offered, and promptly adopted them, five States now out of the Union would have been probably still with us engaged in the generous work of winning back the only pleiad, then missed from our national galaxy. Jubilant in tone, defiant in triumph, and indifferent to the pending crisis, the Republicans have, for seven long weeks, refused even a vote upon them. They have met with no better success in this Hall. Approved warmly in the border States, indorsed by immense petitions in the free States, where they seemed to have struck a responsive chord in the popular heart, eminently just to the free States as a basis of settlement, the greater portion of the Republican party have witnessed State by State sever the bonds of their Federal allegiance, without concession, and with seeming and stolid indifference.

The position of the leader of the dominant party in a country like ours upon this floor, and at a period like this, is, I grant you, sir, a distinguished honor. It attaches to its distinction, however, proportionate and perilous responsibility. I confess I listened, therefore, with deep-felt anxiety to hear with what favor the Crittenden propositions would be received by the distinguished chairman of Ways and Means. I was pained to hear him announce, and that, too, it seemed to me, as a representative man, that the proposed amendments could never receive his support. Indeed, he went further, and told us frankly that he could never sustain the "border-State propositions," or any other, that recognized slavery as the existing *status* of any of the Territories. Many leading Republicans upon this floor have gone further. One (Mr. WASHBURN, of Wisconsin,) boldly told us, he was against all compromise, and would never, himself, vote for the admission of another slave State.

If such doctrines had prevailed in the earlier days of our history, no one will assert, that the Constitution could ever have been adopted, or the Union formed. If the dominant party intend to attempt to administer the Government upon any such basis, it must divide and separate the sections forever. Such opinions, and such a policy, when rendered practical, are at war with the fundamental principles on which the Government was constructed, and which must forever constitute the basis of its perpetuation. It has been wisely said, "that the frequent recurrence to fundamental principles is essential to the preservation of liberty." In a Government, duplicate in its form like ours, if we would prevent antagonisms between the State and General Government, we cannot too often recur to the respective orbits, which the illustrious framers of that matchless instrument, our Federal Constitution, intended and prescribed for the revolution of each.

No one will deny, that the States were equal, sovereign, and independent, when the General Government was formed, by the adoption of the Federal Constitution. This fact was proclaimed in the Declaration of Independence; and by the second clause of the Articles of Confederation, in 1777, each State expressly, "retained its sovereignty, freedom, and independence." By the treaty of peace with Great Britain, in 1783, the States are named, and each State expressly recognized as equal, sovereign, and independent. As free, equal, and sovereign States, they formed a Federal Government; and, as States, framed and ratified the Federal Constitution. The convention which framed that instrument, did not emanate from, and was not called by any vote of the people. The old Congress of the Confederation recommended the appointment of delegates by State Legislatures to form such a Constitution; and when formed, it was ratified, not by the people of the States, or of the United States, but by each State in convention respectively called for that purpose. The Constitution, by its own terms, required a ratification of it by nine States. Had six States refused to call conventions for the purpose of passing on its adoption, the Constitution would have failed, without even a consideration of its merits. It was

in this way the Constitution was formed, and the General Government erected.

What were its objects, and what considerations induced its formation? Certainly not the annihilation of the States or State governments. Its declared objects were "to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." Certain powers and duties, which, for the public defence and general interest of all the States, could be better performed by the Federal Government, were confided to it, and it became the agent of all the States for such purposes. The exclusive powers necessary for the execution of such trusts were delegated to it by the States, as well as others, to be exercised by it in conjunction with the States, and which are set out in the Constitution. Two governments, each representatives of the separate and independent States, were thus created, and to which, within their respective delegated spheres, obedience was due. The States, with their State governments existing prior to the adoption of the Federal Government, clearly parted with no more of their sovereignty than was essential to carry out the objects of their confederation, and which was expressed in the Federal Constitution. All power not conferred, was expressly reserved to the States, or the people. The power thus parted with, was delegated to be exercised by the Federal Government, as the joint agent of all the States, for their common protection and benefit. It was partly Federal, and, in some particulars, national; but, as the term Federal Union clearly indicates, it was a Confederation of sovereignties, and not a popular consolidated Government. The origin, formation, and objects of the Federal Government, not less than the express and implied limitations on its power, as set out in the Federal Constitution, abundantly establish that, while popular sovereignty was the base on which the respective State governments rested, it did not, and could not underlie the substratum on which the Federal Government rests. As each government was intended as the instrument for the accomplishment of separate and distinct ends, so the powers and limitations of each were peculiar and distinct. They were, in some instances, to be mutual and dependent, revolving in separate orbits. So long as they were kept within their prescribed and designed spheres, the danger of collision was prevented, and the great objects intended by the Federal Government were signally and successfully carried out.

Equality underlaid the whole Federal structure; and protection to persons and property, within the Federal jurisdiction, was the price of the allegiance of the States to such General Government, as delegated and prescribed in the Constitution. Wherever the American banner floated, upon sea or land, all beneath it was entitled to the protection of that flag.

For the first time in our history, a political party has acquired possession of the Government, whose acknowledged policy, if carried into practice, must upturn the foundation of our Federal structure by destroying this recognized equality of the States. The Chicago platform proposes to exclude slavery from all territory now held, or hereafter to be acquired; and we are defiantly informed, that this policy is not only to be firmly carried out, but slavery is to be abolished in our dock yards, arsenals, and in the District of Columbia.

On what basis does this doctrine of occlusion of slave property from our public domain rest? It is at war with the spirit and letter of the Constitution, as expounded by the Supreme Court of the United States. It saps and undermines the theory of the Constitution, and would, if it had been insisted on in the earlier days of the Government, have prevented the formation of the Union. It presupposes an antagonism between the free and slave States, which is denied by the past experience of our common progress and renown, and which would cast an undeserved opprobrium on the memory of the illustrious founders of this matchless system of free institutions. We are met with the dogma, that

the normal condition of our Territories is always freedom; and from this mischievous heresy, flow the dangerous and sectional corollaries which have so long disturbed our peace, and now dangerously threaten, the subversion of the Government. I publicly repudiate it, as totally unsound in theory, and destructive in practice.

The Federal Government, as the agent of all the States, can only acquire territory, *sub modo*, under the limitations of the Constitution. The moment territory is acquired, all public law, and the political impress of any foreign nation upon the territory thus acquired, would, at the moment of acquisition, *eo instanti*, give way to the genius and character of our own institutions. This distinction between public political rights and mere municipal ones, which are always upheld after acquisition, are so well established by the law of nations as to require no comment. Is it doubted, that if we acquired territory from any nation recognizing Church and State, that at the instant of acquisition, it would give way to the religious freedom stamped upon our institutions? So, too, if we acquired Canada, with the impress of freedom upon it, can it be questioned that the Federal Government, as the trustee of slave States and free States equally, would, at the moment of acquisition, hold it free from such impress, and as the joint property of each and every State, to be settled equally by the people of all the States?

Again: if this position be denied, still, if we keep constantly before us, the true federative character of our Government, as contradistinguished from a social consolidated nation, as already pointed out by me, I think we can have no difficulty in a safe solution of this question of slavery in the Territories. The emigrants to our Territories go generally from our various States, slave and free. Each State is equal, but each has its own municipal law. These systems of law, differ in many of the States, and are often in direct antagonism. The early pioneers to the Territories from the various States, are supposed to carry with them the law of the State, from which they emigrate, together with every species of property, sanctioned by it. The emigrant from the free State, with his chattels, meets his brother from the slave State, with his property, on the public domain of a common country, and there they retain the law, usages, and customs of their respective States, until a new form of government is ordained for that Territory, by the law-making power of the General Government. Why should not the same communion and fraternal regard bind these early settlers and emigrants from sister States into these Territories which bound their common ancestry, when they fled from despotism, and cast their lot together in the wilderness, to vindicate the right of man's capacity to govern himself? Is any right of person, or property, invaded by such a fellowship?

Besides, sir, when the Constitution was adopted, there were twelve slave States, and but one free State. If the Territories were, from analogy, to become impressed, wholly with the features of slavery or freedom, looking exclusively to the States, to which domain belonged, that impress would have been slavery, and not freedom. This is not, however, true, and has never been claimed by any slave State. When the slaveocracy, as we are now contemptuously styled, by those, toward whom we have always fulfilled our covenant vows of Federal fealty, controlled the Government, they stood then, as they stand now, on the broad basis of justice and equality. The Federal Government, under their administration, was the agent equally of all the States. The Territories were equally open to emigration, from free and slave States. The broad basis of equality, on which our fathers placed this Federal Government, was jealously watched, and faithfully preserved. Under such administration, we have made matchless progress in the race of nations. It is only when a party, whose avowed policy is to war upon this equality, culminates into power, that our federative system totters and declines.

It is insisted upon the other side, that this institution of slavery is against humanity; proscribed by Christendom; denounced by the law of nations; and that we are asking the free States to surrender their religious opinions, and moral convictions, to our peculiar institution.

Republicans, are you better than your fathers? When did you become so? Where do you adduce your ethereal views of religion and morality, that you cannot respect the rights of the descendants of those who, as slaveholders, with your fathers, sundered, through "a red baptism of blood," the fetters of despotism; and, with their garments yet wet, upon the altar of that common country, erected the noblest Government ever blessed by God? Will you suffer your fanaticism to become the instrument of its destruction?

It pained me, to hear the gentleman from Ohio, (Mr. STANTON,) for whom I I entertain the highest respect, both as a lawyer and a man, assert that slavery, was never sanctioned by the common law, or law of nations, but was the creature of local law. Sir, I differ with him, *toto cælo*. Where can he show me a statute, in any State, establishing slavery? Our ancestors brought the common law with them, and it is an admitted historical fact, that African slavery existed in the thirteen original States. Now, if the common law does not sanction slavery, and no statute can be found establishing it, how was it recognized, and how did it originally find a footing in the free States? Whence the necessity of statutes for its abolition? Why did not the pernicious thing perish in the pure atmosphere of puritanism of New England, denounced by the common law, and unsupported by any statute? Yet it continued for years; and strange to say, opposition to the abolition of the slave trade, insisted on by southern men, came from the ancestors of Republicans who wish us now to become their pupils in the school of morals. Nay, more, Mr. Speaker: I doubt not even at this day, in New England, that a note given in New Orleans for the price of a slave, and transferred to some Boston merchant, could be recovered before a Republican jury, with a plea impeaching its consideration as vicious. If so, then slavery is not contrary to the law of nature, or of morals, since, "*ex turpi causa, non oritur actio*," and I would cite Republican action against Republican theory.

Mr. Speaker, I deny that slavery is the creature of municipal law. It is one of the erroneous corollaries which has been deduced from a loose noxious *obiter dictum* of Lord Mansfield in Somerset's case; and which, I regret to say, but frankly admit, has crept into the opinions of many able judges in our American courts. I may be pardoned for saying, it is, nevertheless, a legal heresy. After the lucid exposition of Senator BENJAMIN on this subject, three years ago, I am spared the necessity of any lengthened notice of the error that the common law does not sanction slavery. I cannot, however, forbear making England herself, well known to be no apologist for slavery, a witness against the position of the gentleman from Ohio, (Mr. STANTON,) on this point. He is, I know, familiar with the case of the slave Grace, decided by Lord Stowell, and reported in 2 Hazzard's reports, page 94. The facts of that case were, that Mrs. Allen, of Antigua, came to England in 1822, bringing her female slave Grace. She remained with her mistress until 1823, when she returned with her voluntarily to Antigua. She continued as a domestic slave with Mrs. Allen until 1825, when she was seized by the waiter of the customs at Antigua, as forfeited to the King, on having been illegally imported in 1823. The vice admiralty court of Antigua decreed the slave to her owner, Mrs. Allen, from which an appeal was prayed.

Lord Stowell affirmed the judgment, in a learned, lengthy, and able opinion. I commend it to the gentleman from Ohio. In it, he reviews Lord Mansfield's opinion in the Somersett case, with a spice of ironical satire. Lord Stowell says:

"The real and sole question which the case of Somersett brought before Lord Mansfield, was, whether a slave could be taken from this country in irons and carried back

to the West Indies to be restored to the dominion of his master? And all the answer, perhaps, which that question required was, that the party, who was a slave, could not be sent out of England in such a manner and for such a purpose, stating the reasons of that illegality. It is certainly true that Lord Mansfield, in his final judgment, amplifies the subject largely. He extends his observations to the foundation of the whole system of the slavery code; for in one passage he says, 'that slavery is so odious that it cannot be established without positive law.'

"Far be the presumption of questioning any *obiter dictum* that fell from that great man on that occasion; but I trust I do not depart from the modesty that belongs to my situation, and, I hope, to my character, when I observe that ancient custom is generally recognized as a just foundation for all law; that villenage of both kinds, which is said by some to be the prototype of slavery, had no other origin than ancient custom; that a great part of the common law itself, in all its relations, has little other foundation than the same custom; and that the practice of slavery, as it exists in Antigua and several other of our colonies, though regulated by law, has been, in many instances, founded upon a similar authority."

Lord Stowell adds, in regard to the suggestion in the Sommerset case, that the air of the island was too pure for slavery.

"How far this air was used for the common purposes of respiration during the many centuries in which the two systems of villenage maintained their sway in this country, history has not recorded."

Again, he says, as to the revival of slavery in the colonies:

"I have first to observe, that it (slavery) returns upon the slave by same title by which it grew up original. It never was in Antigua the creature of law, but of that *custom*, which operates with the force of law; and when it is cried out, that *malus usus abolendus est*, it is first to be proved that, even in the consideration of England, the use of slavery is considered as a *malus usus* in the colonies."

Here is a direct authority as to the usage and common law of England in tolerating slavery, and from a most eminent English jurist. This opinion, if I am not mistaken, was commended by the late Justice Story.

Allow me to read another short opinion by the same distinguished judge, in the case of Demarara and its dependencies. (6 Admiralty Reports.) The question arose as to the character of slaves in the arsenals and forts of Demarara, on the 31st September, 1803, when it surrendered to Great Britain:

"The slaves are in number three hundred and ninety-nine, of whom two hundred are no longer the subject of contest, but are now admitted to have belonged to the estate on which they were employed as *glebæ ascriptitii*: they were attached to the soil as part and parcel of the realty, and upon that account, the question with respect to them has very properly been given up by the captors."

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"The first question is, whether slaves are at all given to the captors by the prize act, that is, whether they pass by words 'stores of war, goods, merchandize, or treasure,' which, by the third section of the statute, are to be deemed prize, and to be apportioned by his majesty between the Army and Navy, when acting in conjunction. Now, the fact is, that slaves have generally been considered as personal property. The word *mancipia*, as it has been well observed, signifies *quæ manu capiuntur*. This is unquestionably the meaning of the word according to the civil law. In our West India colonies, where slavery is continued, and is likely to continue longer than in any of the countries of Europe, slaves have been for some purposes considered as real property; but I apprehend that, where the country is not shown, the general character and description of them is, that they are personal property, and I see no reason in the present case for saying that they are not within the general rule, and consequently that they are not to be considered 'as goods or merchandise.' They are liable to be transferred by purchase and sale, and although the owner may choose to employ them on his own works, instead of transferring them for a valuable consideration, they are not, I apprehend, the less 'goods and merchandise' on that account. The very same observation applies to all other cases of personal property, for all such property, if salable, is merchandise, although the person in possession may not be a merchant, or mean to dispose of it by sale."

Once more: in the case of Le Louis (6 Admiralty Reports) Lord Stowell is still more emphatic on the subject of the recognition by the law of nations of

the African slave, if recognized as lawful by the country whose bottoms are engaged in it. He says:

"It (the court) must look to the legal standard of morality; and upon a question of this nature, that standard must be found in the law of nations, as fixed and evidenced by general and ancient and admitted practice, by treaties, and by the general tenor of the laws and ordinances, and the formal transactions of civilized States; and looking to those authorities, I find a difficulty in maintaining that the traffic is legally criminal.

"Let me not be misunderstood, or misapprehended, as a professed apologist for this practice, when I state facts which no man can deny, that personal slavery arising out of forcible captivity is coeval with the earliest periods of the history of mankind; that it is found existing—and, as far as appears, without animadversion—in the earliest and most authentic records of the human race; that it is recognized by the codes of the most polished nations of antiquity; that, under the light of Christianity itself, the possession of persons so acquired has been in every civilized country invested with the character of property, and secured as such by all the protections of law; that solemn treaties have been framed and national monopolies eagerly sought, to facilitate and extend the commerce in this asserted property; and all this, with all the sanctions of law, public and municipal, and without any opposition, except the protests of a few private moralists, little heard and less attended to, in every country, till within these very few years, in this particular country. If the matter rested here, I fear it would have been deemed a most extravagant assumption in any court of the law of nations to pronounce that this practice, the tolerated, the approved, the encouraged object of law ever since man became subject to law, was prohibited by that law, and was legally criminal. But the matter does not rest here. Within these few years a considerable change of opinion has taken place, particularly in this country. Formal declarations have been made, and laws enacted, in reprobation of this practice; and pains, ably and zealously conducted, have been taken to induce other countries to follow the example, but at present with insufficient effect; for there are nations which adhere to the practice under all the encouragement which their own laws can give it. What is the doctrine of our courts, of the law of nations, relative to them? Why, that their practice is to be respected; that their slaves, if taken, are to be restored to them; and if not taken under innocent mistake, are to be restored with costs and damages. All this, surely, upon the ground that such conduct on the part of any State is no departure from the law of nations; because if it were, no such respect could be allowed to it upon an exemption of its own making, for no nation can privilege itself to commit a crime against the law of nations by a mere municipal regulation of its own. And if our understanding and administration of the law of nations be, that every nation, independently of treaties, retains a legal right to carry on this traffic, and that the trade carried on under that authority is to be respected by all tribunals, foreign as well as domestic, it is not easy to find any consistent grounds on which to maintain that the traffic, according to our views of that law, is criminal."—*English Admiralty Reports*, vol. 2.

Need I refer to the case of the Antelope, in which the distinguished and lamented Chief Justice Marshall held that—

"The African slave trade had been sanctioned in modern times by the laws of all nations who possess distant colonies, each of whom has engaged in it as a common commercial business which no other could rightfully interrupt. It has claimed all the sanction which could be derived from long usage and general acquiescence."

The gentleman from Ohio (Mr. STANTON) will surely not contend that these decisions sustain his position, that African slavery is a local institution, created exclusively by State laws, or that the common law did not recognize property in a person. Sir, upon what ground could we have ever obtained indemnity, as we have often done for the loss of our slaves on the high seas, if this doctrine were true? The official correspondence of our ministers abroad abounds in claims of this character, and many have been successful; but if foreign nations had followed the doctrines of the Republican party, our claims in every instance would have been ignored.

The gentleman from Ohio, however, greatly surprised me in his positions against the right of transit with our slaves through the free States. The objections urged were not new; but I was pained to hear them used by my friend from Ohio. His known conservatism led me to expect a more liberal policy

towards the slave States. What are his objections to this right of transit? He says:

"But if the Constitution recognizes the slave as property, and as such he is taken by his master into a slave State, he goes there subject to all the incidents and liabilities of property. He is liable to be seized on execution or attachment for the payment of his master's debts. He may, of course, be sold at public auction, to the highest bidder. And if the sale be legal, and the purchaser require a good title, is there any reason why a person domiciled in the free States when the sale is made, may not become the purchaser, and hold the title? But if the master should die in a free State, having his slaves with him, and leaving debts unpaid, the slaves must go to the administrator as assets for the payment of his debts, and for distribution to his heirs."

It is difficult to perceive how the free States could be injured by any of these objections. Their occurrence is very improbable; but if they occurred, as stated by the gentleman, what injury occurs to the people of the free States?

Every State can prevent the seizure of a slave, by providing that slaves are exempt from execution. That is the case in some of the slave States now. This done, the objections fall. Does the gentleman not know that debts are often recovered in Ohio, on notes given for the sale of slaves and assigned to the citizens of his State? Suppose the master die while *in transitu* with slaves, can they not be taken back to his domicil and there distributed? If the negroes should escape and become free, so far from an injury to the free States, it would gladden the hearts of thousands of its anti-slavery inhabitants.

My friend supposes a case of resistance, or killing of the slave by the master, in resistance of the former to the latter, *in transitu*, and says it would not be murder, because the law of the State from whence they came would make the murder justifiable homicide. I deny both the fact and the conclusion. The free States can punish all offenses as they please within their own jurisdiction; and the unjustifiable killing of a slave by his master is punishable as murder or manslaughter in the slave States. There is, therefore, nothing valid in these objections against this right of transit as claimed; and it seems to me it is due, and should be yet demanded, as a constitutional guarantee between the States, as an amendment to the Constitution.

Mr. Speaker, it is time that the Representatives from the various sections should distinctly face each other, and meet the dangers that are upon us. The Chicago platform cannot be carried out, and the Confederacy preserved. We question not the right of any party to elect its candidates under the regular organic forms of our Government. Mr. Lincoln has been thus elected, I readily admit. But the slave States have a right to resist the execution of a policy at war with their interests, destructive of their peace, injurious to their rights, and subversive of the ends and objects for which the Union was formed. No party can be allowed to array section against section, with the ultimate purpose of destroying the property and rights of the weaker section; and such must be the inevitable tendency of the distinct avowal in the Republican creed, of "no more slave territory." To exclude slavery forever from present or future acquired territory, is publicly to announce that another slave State can never enter into the bond of our common Union. No slave State can ever apply for admission, if slave labor is forever excluded from our public domain.

The result of such a policy was clearly predicted during the late canvass. Kentucky preferred, and hoped to make the contest against the inauguration of such doctrines within the Union. That gallant old Commonwealth trusted to the political power of the slave States in Congress to check, by constitutional restraints—in withholding supplies, rejection of improper nominations, and a non-concurrence in measures of sectional policy—to protect her honor and rights, with those of her sister slaveholding States, from danger and assault. Her influence and voice were exerted towards such a policy. Other sovereign States, having equal interests at stake, and the exclusive right to decide their

own action, have determined to pursue, and have already followed, a different policy. Kentucky's voice, ere the sad work of dismemberment was begun, addressed itself to the dominant party for compromise and peace. She asked from that party no concession, but only a construction of our covenant as judicially construed, and its eternal protection from unhallowed touch in any quarter. Her voice was unheeded by the dominant party, and the work of withdrawal went on. Is this Government to go down; and if so, is our separation to be in peace or in war? The solution of this fearful question rests with the Republicans. Your policy and assault upon the constitutional rights of our section have raised the whirlwind; on you must forever rest the vast responsibility of its results.

Our country has passed through many dark and trying crises; but there have been, hitherto, under providential guidance, always found statesmanship profound enough, and patriotism deep enough, to disarm them of danger and mischief.

Do you remember the stern remonstrance of Kentucky, in 1794, because the free navigation of the Mississippi had not been secured. Her Legislature announced in calm, but strong language, that God and nature had given that right, and they would remain in no Union where it was not forever guarantied. George Washington was then President, and he uttered no menaces against that jealous Commonwealth. In a spirit of compromise and patriotism, he recommended a respectful reply to her remonstrance; the facts were laid before the Legislature, and the free navigation of the "father of waters," was secured.

What next? In 1807, a storm raged in New England at the passage of the embargo act. The proud spirit of that people rebelled against the alleged enormities and injustice of the operation of that act upon its immediate section. The legislative records of New England, at that period, will show that even they were prepared to outstrip Carolina in her purpose to break the ligaments that bound them to the Union, unless that law was repealed. The embargo act had been a favorite measure with Mr. Jefferson; but when he saw the discord which it kindled, and the danger which it produced in the New England States, with a breast filled with patriotism, as broad as his whole country, he surrendered his cherished policy, and the embargo was repealed.

Again: in 1820, when the Union was rocked to its center, and the brazen head of the anti-slavery serpent, reared itself in open rebellion to the equality and rights of the States, compromise and concession brought healing on its wings, and the country was saved.

In 1832, when South Carolina, stung by the oppressive exactions of the tariff, determined to resist its operation, and prepared herself for an issue with the Federal authority; in that dark hour, when civil war seemed inevitable, Virginia threw herself in the breach between the Federal Government and her jealous but defiant sister, until Kentucky, in the person of her great commoner, could pour oil on the troubled waters by a modification of the obnoxious statute. How necessitous, how urgent, did the perils of that dark period demand the spirit of compromise? How magnificently beneficent the lofty patriotism of the great actors in that political drama, which could bid party down for the preservation and peace of a noble Confederacy! It will forever stand out in bold relief among the epochs of our country as the oblation of sublime patriotism to free institutions. The great author and defender of the American system, uniting with him who had boldly announced "that the Federal Union must be preserved" for the peace of the common country!

Again: in 1849, when the increasing and aggressive power of anti-slavery sentiment upon our constitutional rights, overleaped the compromise of 1820, refusing to allow the Missouri line to be extended to the Pacific in our newly-acquired territory, the country was convulsed, and the Union threatened. But

again, under God's providence, the patriotic wisdom of a noble triumvirate, now passed away, but whose precepts and virtues speak to us from the grave, with noble followers, saved and restored peace to a distracted country.

That noble country bleeds once more; and our American Republic is being dismembered. Kentucky again presents her olive branch of peace, and asks you, why will you not take wisdom of the past, and hearken unto her conciliatory whisperings?

We are defiantly told by the other side, that they cannot listen to traitors; and *rebellion must be put down.* Was that the reply of Washington, Jefferson, Clay, Webster, Calhoun and Cass, in our trials of the past, and in former *national exigencies?* Was that the course of slaveholding Presidents, when the free States rebelled against the Government of the United States? We have been refreshed with expletives of denunciation against the treason and rebellion of South Carolina, by gentlemen from Pennsylvania, Connecticut, and Massachusetts; but are the skirts of their own States free from what they term these "*damnable heresies?*" Did not Pennsylvania openly rebel against the United States in the Olmstead case? Did not the Legislature of that venerated old Commonwealth, in 1809, impose upon her Governor the responsibility of calling out the entire militia, to resist the execution of a judgment of the Supreme Court of the United States? Did not Massachusetts openly rebel against the requisition of the United States for troops in 1812? When the war against Great Britain was declared in that year, and the motto of "free trade and sailors' rights" was unfurled upon our standard; when many a brave heart trembled at the apprehended havoc upon the ocean which would follow a collision with the prowess, superior armament, and boundless resources of the then acknowledged mistress of the sea, how did Massachusetts act? How did Connecticut act? God forbid that I should reproach either State! My heart is big enough and national enough to take in all New England as a part of my country, and exult in all that is bright and glorious in her annals.

When, however, I heard the gentleman from Connecticut, (Mr. FERRY,) and the gentleman from Massachusetts, (Mr. ———,) hurling their thunderbolts against the treason and rebellion of the South, it occurred to me they were oblivious of the fact, that both their States, had, in their history, set South Carolina memorable examples of resistance to the Federal Government, which was practical in its character, and was claimed by Massachusetts to be "*one of the reserved rights of the State.*" What are the facts? On the 12th of April, 1812, a requisition was made on the several States for one hundred thousand volunteers, and to be apportioned in a certain ratio among the States, for the purposes of the war. Under this requisition of the War Department, General Dearborn made a requisition upon Connecticut and Massachusetts for their ratio. Caleb Strong was then Governor of Massachusetts. When the requisition was made on him by General Dearborn, under the act of Congress, to furnish troops, he sent a letter to Mr. Eustis, the then Secretary of War, claiming that the President of the United States was not authorized, under the Federal Constitution, to judge of the exigencies in which the militia should be called out; that he had consulted the supreme court of Massachusetts, and that that court concurred with him in opinion; that Massachusetts had, under the reserved rights in the amendments to the Federal Constitution, a right to resist the Federal Government; that she had determined to do so, and that to yield an acquiescence, would be to make this a grand military despotism, to which she never intended to submit, but would resist at all hazards. For the sake of history, I propose now to read what these judges said; and I would remark here, that no Representative from the State of Massachusetts can say, that South Carolina has ever gone further, in the claim of resistance under the reserved rights of the States, to nullify or abrogate the ties that bind her to this Confederacy.

I will read first the opinion of the judges of the supreme court of Massachusetts given to the Governor:

To his Excellency the Governor and the honorable the Council of the Commonwealth of Massachusetts:

The undersigned, justices of the supreme judicial court, have considered the questions proposed by your Excellency and honors for their opinion:

By the constitution of this State, the authority of commanding the militia of the Commonwealth is vested exclusively in the Governor, who has all the powers incident to the office of commander-in-chief, and is to exercise them personally, or by subordinate officers under his command, agreeably to the rules and regulations of the Constitution and the laws of the land.

While the Governor of the Commonwealth remained in the exercise of these powers, the Federal Constitution was ratified, by which was vested in the Congress a power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to provide for governing such parts of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers.

The Federal Constitution further provides that the President shall be commander-in-chief of the Army of the United States, and of the militia of the several States, when called into the actual service of the United States.

On the construction of the Federal and State constitutions must depend the answers to the several questions proposed. As the militia of the several States may be employed in the service of the United States, for the three specific purposes of executing the laws of the Union, of suppressing insurrections, and of repelling invasions, the opinion of the judges is requested whether the commanders-in-chief of the militia of the several States have a right to determine whether any of the exigencies aforesaid exist, so as to require them to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress.

It is the opinion of the undersigned that this right is vested in the commanders-in-chief of the militia of the several States.

The Federal Constitution provides that, whenever either of these exigencies exist, the militia may be employed, pursuant to some act of Congress, in the service of the United States; but no power is given, either to the President or to the Congress, to determine that either of the said exigencies do in fact exist. As this power is not delegated to the United States, by the Federal Constitution, nor prohibited by it to the States, it is reserved to the States, respectively; and, from the nature of the power, it must be exercised by those with whom the States have, respectively, intrusted the chief command of the militia.

It is the duty of these commanders to execute this important trust agreeably to the laws of their several States, respectively, without reference to the laws or officers of the United States, in all cases except those specially provided in the Federal Constitution. They must, therefore, determine when either of the special cases exist, obliging them to relinquish the execution of this trust, and to render themselves, and the militia, subject to the command of the President. A different construction, giving to Congress the right to determine when these special cases exist, authorizing them to call forth the whole of the militia, and taking them from the commanders-in-chief of the several States, and subjecting them to the command of the President, would place all the militia, in effect, at the will of Congress, and produce a military consolidation of the States, without any constitutional remedy, against the intentions of the people when ratifying the Constitution. Indeed, since passing the act of Congress, of February 28, 1795, chap. 101, vesting in the President the power of calling forth the militia, when the exigencies mentioned in the Constitution shall exist, if the President has the power of determining when those exigencies exist, the militia of the several States is, in effect, at his command, and subject to his control.

No inconveniences can reasonably be presumed to result from the construction which vests the commanders-in-chief of the militia of the several States the right of determining when the exigencies exist, obliging them to place the militia in the service of the United States. These exigencies are of such a nature that the existence of them can be easily ascertained by, or made known to, the commander-in-chief of the militia, and, when ascertained, the public interest will produce prompt obedience to the acts of Congress.

Another question proposed to the consideration of the judges is, whether, when either of the exigencies exist authorizing the employing of the militia in the service of the United States, the militia thus employed can be lawfully commanded by any officer but of the militia, except by the President of the United States?

The Federal Constitution declares that the President shall be commander in-chief of the Army of the United States. He may undoubtedly exercise this command by officers of the Army of the United States, by him commissioned according to law. The President is also declared to be the commander-in-chief of the militia of the several States, when called into the actual service of the United States. The officers of the militia are to be appointed by the States; and the President may exercise his command of the militia by officers of the militia duly appointed.

But we know of no constitutional provision authorizing any officer of the Army of the United States to command the militia, or authorizing any officer of the militia to command the Army of the United States. The Congress may provide laws for the government of the militia, when in actual service, but to extend this power to the placing them under the command of an officer, not of the militia, except the President, would render nugatory the provision, that the militia are to have officers appointed by the States.

The union of the militia in the actual service of the United States with troops of the United States, so far as to form one army, seems to be a case not provided for or contemplated in the Constitution. It is, therefore, not within our department to determine on whom the command would devolve on such an emergency, in the absence of the President; whether one officer, either of the militia, or of the Army of the United States, to be settled according to military rank, should command the whole; whether the corps must be commanded by their respective officers, acting in concert as allied forces; or what other expedient should be adopted, are questions to be answered by others.

The undersigned regret that the distance of the other justices of the supreme judicial court renders it impracticable to obtain their opinions, seasonably, upon the questions submitted.

THEOPHILUS PARSONS,
SAMUEL SEWALL,
ISAAC PARKER.

Now, sir, that is the opinion of the judges of the Supreme Court. Here is the answer of the Governor, acting on that opinion, declining to furnish the quota of men of Massachusetts, which quota never was furnished during the entire war. What does he say?

"Although many of the most important attributes of sovereignty are given by the Constitution to the Government of the United States, yet, there are some which still belong to the State governments. Of these, one of the most essential is the entire control of the militia; except in the emergencies above mentioned, this has not been delegated to the United States. It is therefore reserved to the States respectively; and whenever it shall be taken from them, and a consolidation of the military force of the States shall be effected, the security of the State governments will be lost, and they will wholly depend for their existence upon the moderation and forbearance of the national Government.

"I have been fully disposed to comply with the requirements of the Constitution of the United States, and the laws made in pursuance of it, and sincerely regretted that any request could be made by an officer of the national Government to which I could not constitutionally conform. But it appears to me that the requisition aforesaid was of that character; and I was under the same obligation to maintain the rights of the State as to support the Constitution of the United States. If the demand was not warranted by the Constitution, I should have violated my duty in a most important point, if I had attempted to enforce it, and had thereby assisted in withdrawing the militia from the rightful authority of the State."—*Niles's Register*, vol. 3, p. 117.

I hope the Representatives from New England will therefore find, in the solemn adjudications of the supreme court of Massachusetts, and in the answer of her Governor to the Government of the United States, in a time of war with a foreign nation, that if Massachusetts and Connecticut were sensitively jealous of the rights reserved to the States, slaveholding Representatives on this floor, with threats of coercion, and United States troops guarding the District, with prepared force bills, &c., must be excused for exhibiting at least as much sensitive jealousy for our respective States in times like these. Where are now the compunctions of conscience of New England, when the attempt is made to strike down State rights and deny either a revolutionary right or a constitutional right of secession—the despotic heresy boldly claimed by some, of a right to force States into the Union at the point of the bayonet. We heard of none of these threats of force from Mr. Madison against Massachusetts and Connecticut, although they never did obey the requisition. Republican Representatives, this

is all wrong. This spirit of force dishonors your ancestry and ours, who looked to popular love, popular necessity, and popular safety as the basis of their Union. Let the spirit of love and forbearance which animated them inspire us. Let us accept the Crittenden propositions; let us compromise these questions now and forever. Then, sir, we shall prove ourselves worthy of this great heritage.

But I am told that the Republican party cannot take these propositions, because your platform will not permit you. Gentlemen, burn on your country's altars, all allegiance to party platforms; and if you still have the same sort of pride that inspires South Carolina to reject all efforts to bring her back, let the peace congress, which is soon to assemble here, adopt these amendments as a common basis of settlement, in which North and South can meet without a sacrifice of pride or principle. Let this ultimatum be presented in the spirit of a genuine fidelity to the Constitution and the Union; and let us all meet again around a common altar, and devoutly praise God, and rejoice at our preservation.

But I am told, that to recognize and adopt these amendments would open all Mexico to fillibustering, and that the whole of Mexico would be ultimately brought in as slave States. Let me beg you to add another amendment to the propositions of the distinguished Senator from Kentucky. Its adoption would obviate every difficulty. Let the Senate be divided into two classes, one from the slave States, and the other from the free States. Whenever five States demand a vote by classes, on measures involving the acquisition of territory, or the *status* of slavery, let a majority of both classes be required for the passage of the measure. Then you check one class with the other; then there can be no imposition, no injustice. Then we shall stop all fanaticism, all force, in our Territories, because no injustice can be done, no matter who people the Territory first. There will be no indecent legislation with the view of an increase of political power. We shall have a mutual confidence in each other; and by the amendments to the Constitution, we will have a mutual check on each other. Then we shall go on in this noble race of freedom, and perform our high duties to God, ourselves, and our country.

If, Republicans, you turn a deaf ear to all arguments; if you turn your back on every poposition looking to the preservation of this Constitution, which is the only bond of our Union, then you have but one resort left. It matters not whether secession be constitutional, or whether it be revolutionary, I tell you plainly, for the border States, that they know their own honor and their own equality, and that they will maintain it at every hazard and at every sacrifice. Suppose you declare war, and force us to the *ultima ratio regum:* what then? The gentleman from Ohio, (Mr. SHERMAN,) asked me the other day in regard to a gallant Kentuckian, who saw his flag lowered at Fort Moultrie, how I could reconcile it to myself to see such an indignity. I can answer the gentleman, that it saddens my heart, and grieves the heart of every true man in Kentucky, to see star by star eclipsed even for a moment from that American ensign; but unless Republican warfare on our rights relents; unless his party meet us in the spirit of compromise which gave birth to the Union, they will not be in temporary eclipse, but they will be extinguished forever; and in place of the twinkling and bright representatives of sovereign and united States, "distinct as the waves, yet one as the sea," republicanism will supply the great central sun of a consolidated despotism, whose burning rays will absorb everything like State rights, State equality, State sovereignty. Kentucky loves the Union with all the early and increasing affection of one of its first daughters. In her armorial ensign, amid the clustering and frescoed emblems of State sovereignty above us, is reflected her devotion to its perpetuation—"united, we stand; divided, we fall!" It is ever above us and before us; it stamps every commission Kentucky bestows, and is the signet seal of sovereignty to every official paper which emanates from her archives. But it is a Union of equals that claims her allegiance,

and commands her regard. War upon that equality, which the American Constitution ordained, the American Union was designed to perpetuate, and of which the stars and stripes are the glorious and gladdening emblems, and you multiply the guilt of your crime, in usurping and prostituting the American standard sheet of all the States as the flag of so unnatural a strife of one section against the other. Attempt so unnatural a purpose, and the clustering associations of past fellowship, common devotion, fraternal love, will but increase the intensity of our antagonisms.

"But few shall part where many meet;
The snow shall be their winding sheet,
And every turf beneath their feet
Shall be a soldier's sepulcher."

Remember, my friends, if that sad hour of blood ever comes, that it will not be a war of our making. I am authorized to say, what I believe I can say, that you cannot find a disunionist, *per se*, in Kentucky. She has never been disloyal to any compact. She has suffered at the rate of $200,000 per annum in the loss of her slave property. She has gone in highly sectional times into the free State of Ohio to break bread, and endeavor, if possible, by personal communion, to attempt to wake her to the nobler feelings which a recollection of the late war ought to kindle; and she has received in return, an absolute denial of her constitutional rights in the refusal by the Governor of Ohio to return a fugitive, whose surrender Kentucky had a right to demand, under the letter and spirit of our Federal compact. And even now, with disunion upon us, with the tocsin of war almost sounding in our ears, she has taken no step to rupture her bonds with the North or the South; but she looks to the faithful perpetuation of the Constitution and the Union. She is willing to throw herself once more into the breach, and use her mediatorial office to bring back her erring sisters of the South, if their rights and hers can, by proper guarantees, be recognized and protected. Kentucky comes not as a mendicant for your favor; but in the name of a common country, she appeals to you to give her a message, by which she can attempt to make that appeal practicable. Will you hearken to her, or will you prefer to attempt, at the cannon's mouth, to reduce her to the position of servile degradation?

Gentlemen, reverse the picture, and look at it yourselves. Ask yourselves, what you would think, if the slave States were to attempt to deny to you the right to any species of property recognized by the Constitution, and sustained by the decisions of the court of last resort. What would you do under such circumstances? Why, you would do even more than we have done. You would be alarmed at the infraction of your rights. If you were told by the dominant party of the country, that no free State should be admitted into the Union, would you not consider that determination a *casus belli?* Would you not spurn with contempt, every attempt to keep you in a confederacy where you were spit upon as unworthy of being treated as equals?

Mr. DUNN, (in his seat.) No.

Mr. STEVENSON. One gentleman answers no. Then, sir, the people of the free States, have not the spirit that I gave them credit for.

Mr. DUNN. If the gentleman will allow me for a moment, for fear my remark might be misunderstood, I desire to explain that my answer "no" was to the question I understood the gentleman to ask, whether the Republican party would refuse admission into the Union to a slave State? I am a Republican, and I have pledged myself to my people, upon all occasions, that it would not be a sufficient objection to my mind for voting against the admission of a State, that its constitution was pro-slavery. The Republican party, in its platform adopted at Chicago, recognizes the right of each State to regulate its own domestic matters for itself.

Mr. STEVENSON. There can be no slave States that will ever knock at the Federal door for admission into its covenant, if the Territories are to remain perpetually free while they remain in their territorial condition, and such is the Chicago platform on which my friend stands.

Mr. STANTON. Will the gentleman from Kentucky permit me for a moment?

Mr. STEVENSON. Certainly.

Mr. STANTON. I understand the question in reference to the Territories to be simply this: the Territory of New Mexico is, under the compromise measures of 1850, entitled to admission into the Union with or without slavery. I understand that the four additional States to be carved out of Texas are to come into the Union with or without slavery, as they may elect; so that, so far as those questions are concerned, no party looks to the ultimate exclusion of any State which is likely to desire slavery. Now, with the consent of the gentleman from Kentucky, I desire to ask him if Kentucky will accept the proposition that there shall be no future acquisition of Territory except by an amendment to the Constitution and a two-thirds vote of Congress? That is the bone of contention between us.

Mr. STEVENSON. I will answer my friend, with all frankness, that Kentucky will speak for herself whenever that question comes up. I have no doubt that Kentucky would take a fair division under this line, making all north of it free and all south of it slave territory, until it shall come in as a State, and then to admit it with or without slavery, as the people may determine.

Mr. CURTIS. Will the gentleman allow me to interrupt him?

Mr. STEVENSON. The gentlemen must excuse me. I would give way to him with great pleasure, if I had the time. The inexorable hour rule forbids it. I have not time to discuss several of the topics that demand my time.

Mr. MCCLERNAND. I ask the gentleman from Kentucky to permit me to ask the gentleman from Ohio a question. I ask him if he will take the Crittenden plan with that amendment?

Mr. STANTON. I will say to the gentleman from Illinois, in all frankness, that I will not take anything that by law establishes slavery in any part of the territory of the United States; but I am willing to establish the line, and allow the people south of it to have slavery or not, as they please.

Mr. STEVENSON. Mr. Speaker, I appeal to gentlemen to rise above their party platforms. Let us leap over all party prejudice, and put this matter beyond all the power of extremists—if there be any who hate this Union as originally framed, or any who wish, in either section of our country, to disturb our peace, or rend the confederate links of the model Republic of Christendom. I implore and beseech, in the name of a common humanity, that the Republican party will desist from their unholy warfare against the intrenchments of civil liberty, erected by their fathers and ours, for the peace and happiness of a common posterity. Take warning from history. Let not a fanaticism upon the subject of negro slavery delude you into depths of destruction from which there is no escape. Listen to the eloquent warning of George Canning, in the British Parliament, on the emancipation of Jamaica, when he was sustaining reason and right against folly and fanaticism. That distinguished statesman said:

"Sir, we must remember that we are dealing with a being, possessing the form and strength of a man, but the intellect only of a child. To turn him loose in the manhood of his physical strength, in the maturity of his physical passions, but in the infancy of his uninstructed reason, would be to raise up a creature resembling the splendid fiction of romance; the hero of which can sketch a human form, with all the corporeal capabilities of a man, and with the thews and sinews of a giant; but being unable to impart to the work of his hands a perception of right and wrong, he finds too late that he has only created a more than mortal power of doing mischief, and himself recoils from the monster of his own creation."

So we say to you to-day, in the hour of our national need—in this day of thirst for that broad and catholic statesmanship, that shall look to the Federal Government as the agent of equal, sovereign States, and construe the Constitution and administer the Government in a spirit of exact justice to all sections, with their separate institutions, and with especial favor to none; pause ere the cords which were woven by our fathers, are forever unloosed. Admit South Carolina to have been rash, precipitate, and imprudent; all this cannot enlarge your powers under the Constitution. No violence on the part of one or more States, can upturn the foundation stones of the Government and supply the place of popular affection with bristling bayonets. Kentucky still hopes that the cup of conciliation is not yet drained to its dregs. She looks to the confederate Union of these States in the bonds of a Constitution, faithfully executed, as bearing to one another the relation of the limbs and senses to the human body. As each organ is healthy and free in its organic sphere, so will the perfect maturity of the whole be developed. Maim or destroy one, and to that extent you impair the whole. Far better, however, lop off one or more which become gangrenous, than permit the whole to perish.

Republicans, you must meet us in the spirit of peace, or our relations are forever changed. Do not deceive yourself in regard to the border States. They can take nothing which ignores their equality, or fails to secure justice and peace. They should take nothing, that would not allow them to become successful mediators in bringing back the seceding States. Will you allow the ark of our past political safety to be shipwrecked on the shoals of a wild fanaticism? You have to determine it. My humble career in this House will show that I have been no sectionalist. I have the honor to represent in part, a commonwealth which has proved itself faithful among the faithless. Upon the dark and bloody ground Kentucky has won her title of equality in this Union of States. She may well maintain that equality in the Union or independence out of it. When the Federal bayonets are turned against her southern sisters, the Federal soldiers will never peacefully cross her border. Do not be deceived. The loyalty and prudence which marks her course now, will only increase her wrath, when you despise her proposals, and mock at her entreaties. May the sad hour never come, when we shall cease to be brothers, and cease to be friends. If it does, remember that a common interest and common rights with those attempted to be subdued, will make a common resistance inevitable. The threatening braggarts, who have attempted by their speeches to incite war, will find on that dark day in the Kentucky people, foemen worthy of their steel. Everything for the cause—nothing to fanaticism and folly! We can never sacrifice our equality or rights. If you force us to resistance, yours the responsibility, ours the defence. My loyalty is due to my adopted State. Where she leads, it will be my pleasure to follow. She will speak as befits her, whenever you force her to decide between two confederacies. Meet us where you will with your hosts, and you will never find our backs upon the foe! Downstricken we may be—you may cast these vestures of flesh to your vultures of fanaticism; but the spirits which animate them, can never be enslaved.